

UT 95-7

Tax Type: USE TAX

Issue: Airplane Purchase/Ownership - Third Party as a Brief Intermediary  
Title Holder

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS

v.

XXXXXX

Taxpayer

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Docket #

IBT #

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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. XXXXX for Taxpayer

SYNOPSIS: While conducting an audit upon XXXXX, Inc., the Illinois Department of Revenue (hereinafter the "Department") discovered information regarding sales of airplanes to persons in Illinois, including XXXXX (hereinafter the "taxpayer"). The Department assigned this matter for audit and then made inquiries with taxpayer, XXXXX Inc. and the Federal Aviation Administration. The auditor caused to be issued a corrected return (Dept. Ex. No. 1) that served as the basis for the assessment whose timely protest by taxpayer resulted in the present contested case.

The introduction of the corrected return into evidence established the Department's prima facie case in this matter. (Tr. 8)

The issue in this case is whether a party can avoid payment of Use tax when it purchases an airplane by using a third party as a brief intermediary title holder.

After considering this matter, I recommend the issue be resolved in favor of the Department.

FINDINGS OF FACT:

1. XXXXX Inc. (XXXXX) is a retailer of airplanes. (Dept. Ex. No. 2;

pp. 5, 8-11; 23-25)

2. XXXXX negotiated with taxpayer in June 1988 to sell him a 1980 Piper Cheyenne II - Model , FAA No. . (Dept. Ex. No. 2, pp, 8-11; Tr. p. 15)

3. A purchase agreement for the Piper airplane was executed and dated July 14, 1988 showing it going from XXXXX as seller to XXXXX as purchaser. The selling price is listed as \$319,000, less \$85,000 on trade in for a net \$234,000 due. (Dept. Ex. No. 2, p. 25)

4. A purchase agreement for the Piper airplane was executed and dated July 14, 1988 showing it going from XXXXX as seller to taxpayer as buyer. The selling price is listed as \$319,000, less \$85,000 trade in for a net \$234,000 due. (Dept. Ex. No. 2, pp. 13, 16)

5. On August 25, 1990, the Department issued Notice of Tax Liability (NTL) No. XXXXX for \$15,000 tax plus statutory penalty and interest to a date certain. Taxpayer's prior payment of \$14,625.00 was applied leaving a net balance due of \$5,545.31. (Dept. Ex. No. 3)

CONCLUSIONS OF LAW: A tax is imposed upon the privilege of using tangible personal property in Illinois. (35 ILCS 105/3) The word use is defined in the Use Tax Act as the exercise of ownership power over tangible personal property such as the airplane taxpayer purchased herein. (35 ILCS 105/2 and 3) However, the Use Tax would not apply if the acquisition was not in a retail sale but instead a purchase from a non-retailer. (86 Adm. Code, ch. I, Sec. 130.110)

Taxpayer contends that because it has purchase documents showing it purchased the plane from XXXXX, an individual, the occasional sale exemption applies.

XXXXX did not testify in this matter. The only testimony at hearing was from taxpayer and I do not find it credible for the following reasons. Department records show taxpayer had been negotiating with a retailer,

XXXXXX, to purchase the plane, and this was acknowledged by taxpayer at the hearing. (Tr. 16-17). The documentary evidence shows the plane is transferred by XXXXXX to another party, XXXXXX, who immediately re-transfers it to taxpayer for no difference in consideration. (Dept. Ex. No. 2, pp. 12-13, 16-17, 25-26). This contrasts sharply with taxpayer's testimony about his not knowing how or where XXXXXX acquired the pane and that XXXXXX must have marked up the price to split the difference. (Tr. pp. 30-31).

I find it hard to believe the testimony of taxpayer that he could not recall how he came to do business together with XXXXXX (Tr. 19) as well as his testimony that he did not know from where XXXXXX acquired the plane. (Tr. 30-31). This is a distinctive airplane over which taxpayer had been negotiating with XXXXXX, not an easily forgettable pair of pants or shoes.

In addition, there is in the record a Federal Aviation Administration Bill of Sale showing the plane taxpayer traded in on the Piper, a Cessna 340, going directly from taxpayer to XXXXXX. (Dept. Ex. No. 2, p. 36)

While this contradicts taxpayer's assertion that he traded his Cessna in to XXXXXX in a bona fide transaction, taxpayer's response was that his signature on this bill of sale was forged. (Dept. Ex. No. 2, p. 36, Tr. p. 24) However, my examination of the other signatures in the audit file of XXXXXX (Dept. Ex. No. 2, pp. 3, 11, 13, 16, 18, 33 and 34) does not disclose a definite difference, in fact, the signature in question on sheet 36 is very similar to the others, especially its beginning and ending.

Taxpayer submitted two exhibits, one a letter written by XXXXXX shortly before the hearing (1-25-95) in which he states he is an individual and that his sale of the airplane to taxpayer was an "occasional" sale. (Taxpayer Ex. No. 2) Taxpayer Exhibit No. 1 is a July 19, 1988 memo from an employee of XXXXXX Bank telling taxpayer that they had wire transferred his \$234.00 loan proceeds. However, neither this nor the XXXXXX Transfer Agreement sheet in the record (Dept. Ex. No. 2, p. 14) show who ultimately

received the funds, as they are shown going to an Oklahoma City Bank account in the name of XXXXX. Regarding Taxpayer Exhibit 1, I attach no weight to it as it states a legal conclusion without support or explanation.

In effect, the Department ignores XXXXX's involvement here as a temporary title holder on the basis it was only for the purpose of keeping taxpayer from paying tax. I agree it was proper for the Department to do this as it is supported by case law. In *Miller Brewing Co. v. Korshak*, 35 Ill.2d 86 (1966) the taxpayer argued that it never had title to its point of sale advertising materials, even though it had caused them to be manufactured and then directed their shipment to its Illinois dealers. The court did not accept that argument and in so doing noted that even if taxpayer had proved that someone other than itself had been regarded as owner of the items, this could be ignored because the dominion exercised over them by taxpayer was sufficient to establish taxpayer as their owner for the realistic purposes of a tax statute. *Miller*, at 90

In summary, I find taxpayer's evidence is not sufficiently probative or credible to overcome the Department's prima facie case.

RECOMMENDATION: Based upon the above, I recommend the Department finalize the NTL, and in so doing reduce the tax to \$14,625 to be in accord with the net purchase price of \$234,000.

Respectfully Submitted,

Karl W. Betz  
Administrative Law Judge